

1 THE LAW OFFICES OF RANDOLPH H. GOLDBERG
2 RANDOLPH H. GOLDBERG, ESQ.
3 BAR NO. 5970
4 4000 S. Eastern Avenue, Suite 200
5 Las Vegas, NV 89119
6 (702) 735-1500
7 Fax: (702) 735-0505
8 Attorney for Debtor(s)

9
10 **UNITED STATES BANKRUPTCY COURT**
11 **DISTRICT OF NEVADA**

12 In re:
13 **MARLINA AUSTRIA**
14 Debtor(s).

15 Chapter 13 Proceedings
16 Case No.: 09-15901-LBR
17 Trustee: KATHLEEN LEAVITT

18 Date: JUNE 11, 2009
19 Time: 3:30 PM

20
21 **MOTION TO VALUE COLLATERAL, "STRIP OFF" AND MODIFY RIGHTS**
22 **OF WELLS FARGO HOME MORTGAGE PURSUANT TO 11 U.S.C. §506(a) AND §1322**

23 Comes Now the Debtor, **MARLINA AUSTRIA** (hereinafter the "debtor"), by and
24 through THE LAW OFFICES OF RANDOLPH H. GOLDBERG, and respectfully moves this
25 Court pursuant to 11 U.S.C. §506(a), and §1322, and Bankruptcy Rules 3012 and 9014.

26
27 **STATEMENT OF FACTS**

28 1. Debtor filed the instant Chapter 13, Case Number **09-15901** on **APRIL 17, 2009**.

29 2. As of the date of filing, debtor owned real property located at **5538 JACOB'SFIELD LAS VEGAS, Nevada 89148** (hereinafter the "Subject
30 Property").

31 3. Debtors have obtained a residential appraisal that places the value of the subject
32 property at **\$130,000.00**.

1 4. At the time of filing the instant petition, the Subject Property was subject to
2 the following liens:
3

4 **WELLS FARGO HOME MORTGAGE (First Mortgage): \$157,523.00**

5 **WELLS FARGO HOME MORTGAGE (Second Mortgage): \$59,000.00**

6 **WELLS FARGO HOME MORTGAGE (Third Mortgage): \$50,000.00**

7 5. Therefore, on the date the instant bankruptcy was filed, no equity existed in
8 the Subject Property above the claims of **WELLS FARGO HOME MORTGAGE**
9

10 6. **WELLS FARGO HOME MORTGAGE**'s claim was wholly unsecured on the
11 petition date and if the Subject Property was sold at auction **WELLS FARGO**
12
13 **HOME MORTGAGE** would receive nothing.

14 7. Accordingly, the debtor requests that Your Honor find that **WELLS FARGO**
15
16 **HOME MORTGAGE**'s claim is unsecured and should be reclassified as a
17 general unsecured claim to receive pro rata with other general unsecured creditors
18 through the debtor's chapter 13 plan.

19
20 **LEGAL ARGUMENT**

21 In *In re Zimmer*, 313 F.3d 1220 (9th Cir. 2002), the Court stated that a wholly unsecured
22 lien holder's claim can be modified and reclassified as a general unsecured claim pursuant to 11
23 U.S.C. §506(a), despite the anti-modification language in §1322(b)(2). Specifically, the Court
24 held:

25
26 Section 506(a) divides creditors' claims into "secured...claims" and "unsecured
27 claims." Although the conventional interpretation of "secured" might include any
28 claim in which the creditor has a security interest in the debtor's property, §506(a)

1 makes clear that the status of a claim depends on the valuation of the property. An
 2 allowed claim of a creditor secured by a lien on property in which the estate has
 3 an interest ... is a secured claim to the extent of the value of such creditor's interest
 4 in the estate's interest in such property ... and is an unsecured claim to the extent
 5 that the value of such creditor's interest ... is less than the amount of such allowed
 6 claim. To put it more simply, a claim such as a mortgage is not a "secured claim"
 7 to the extent that it exceeds the value of the property that secures it. Under the
 8 Bankruptcy Code, "secured claim" is thus a term of art; not every claim that is
 9 secured by a lien on property will be considered a "secured claim." Here, it is plain
 that **WELLS FARGO HOME MORTGAGE**'s claim for the repayment of its
 loan is an unsecured claim, because
 its deed of trust is junior to the first deed of trust, and the value of the loan secured
 by the first deed of trust is greater than the value of the house.

10 Accordingly, since **WELLS FARGO HOME MORTGAGE**'s **third** mortgage claim is
 11 wholly unsecured (in that there is no extant equity above the first mortgage in the Subject
 12 Property), the claim should be reclassified by this Court as a general unsecured claim and share in
 13 whatever pro rata distribution is being received. **WELLS FARGO HOME MORTGAGE** should
 14 also be stripped of its secured rights under Nevada State Law since no maintainable security
 15 interest in the subject property exists.

17 Furthermore, the Debtor is not required to file an adversary proceeding to strip the lien of
 18 its secured status. Debtor may "strip off" **WELLS FARGO HOME MORTGAGE**'s consensual
 19 lien by motion. See *In re Williams*, 166 B.R. 615 (Bankr.E.D.Va.1994), *In re Fuller*, 255 B.R.
 20 300(Bankr.W.D.Mich.2000), *In re Hoskins*, 262 B.R. 693 (Bankr.E.D.Mich.2001), *In re King*,
 21 290 B.R. 641 (Bankr.C.D.Ill. 2003), *In re Millspaugh*, 302 B.R. 90 (Bankr.D.Idaho 2003), *Dickey*
 22 *v. Ben. Fin. (In re Dickey)* 293 B.R. 360 (Bankr.M.D.Pa.2003), *In re Hill*, 304 B.R. 800
 23 (Bankr.S.D.Ohio 2003); *In re*
 24 *Sadala* 294 B.R. 180 (Bankr.M.D.Fla.2003), *In re Fisher*, 289 B.R. 544 (Bankr.W.D.N.Y.2003),
 25 *In re Robert*, 313 B.R. 545 (Bankr.N.D.N.Y.2004), *In re Bennett*, 312 B.R. 843
 26
 27
 28

1 (Bankr.W.D.Ky.2004).

2

3

4 **CONCLUSION**

5 Debtors respectfully request that the court:

6 1. Determine that the first mortgage on the subject property exceeds the value;

7 2. Determine that the **WELLS FARGO HOME MORTGAGE** third mortgage

8 claim is a wholly unsecured claim and strip the lien from the subject property

9 pursuant to 11 U.S.C. Section 506(a);

10 3. Reclassify the secured claim filed by **WELLS FARGO HOME MORTGAGE** as

11 a general unsecured claim to be paid pro rata in the general unsecured pool of

12 Debtor's Chapter 13 Plan.

13 4. For such other and further relief which the Court deems just and proper.

14

15 DATED this 7 of May, 2009.

16

17

18 THE LAW OFFICES OF

19 RANDOLPH H. GOLDBERG

20 By: /s/RANDOLPH GOLDBERG/s/

21 RANDOLPH H. GOLDBERG, ESQ.

22 4000 S. Eastern Avenue, Suite 200

Las Vegas, Nevada 89119

Attorney for Debtor(s)

C & R Appraisal Company 702-655-3546

Page #1

Appraisal Report

**5538 JACOBS FIELD STREET
LAS VEGAS, NV 89148**

**C & R APPRAISAL COMPANY
702-278-6099**

Appraised Value as of: MARCH 25, 2009

\$ 130,000

| | | | |
|-----------------------|------------------------|-----------------|-----------------------------|
| Style/Design: | 2-STORY | Lot Size: | 3,500 Sq.Ft. |
| Living Area (Sq.Ft.): | 1,602 | Neighborhood: | FORT APACHE HACIENDA |
| Total Bedrooms: | 3 | Total Baths: | 2.5 |
| Year Built: | 2001 | Effective Age: | 8 |
| Condition: | ASSUMED AVERAGE | Date of Report: | MARCH 31, 2009 |

Client: **MARLINA DUSTRIA**
 Address: **5538 JACOBS FIELD STREET**
 City: **LAS VEGAS** State: **NV** Zip: **89148**
 Phone: Fax:
 E-mail:

FEATURES

PREPARED FOR

PREPARED BY

FILING



Appraiser's Signature

Name: **TRISTA CATER**
 Designation: **LICENSED RESID. APPRAISER**
 Certification or License #: **01127**
 Expiration Date: **6/30/09** ST: **NV**
 E-mail: **TRISTA5@COX.NET**

Client File #:

Appraiser File #: **090335**

The value opinion expressed above is only valid in conjunction with the attached appraisal report. This value opinion may be subject to Hypothetical Conditions and/or Extraordinary Assumptions as indicated in the body of the report. A true and complete copy of this Summary Appraisal Report contains **2** pages.

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RESIDENTIAL APPRAISAL SUMMARY REPORT

SUBJECT PROPERTY IDENTIFICATION

Property Address: 5538 JACOBS FIELD STREET **City:** LAS VEGAS
State: NV **Zip Code:** 89148 **County:** CLARK
Legal Description of Real Property: LOT 74, BLOCK B OF FORT APACHE HACIENDA SOUTH
Tax Assessor's Parcel #: 163-30-811-007 **R.E. Taxes:** \$ 1,890.70 **Tax Year:** 09-10
Special Assessments: \$ **NONE** **Current Owner of Record:** DUSTRIA, MARLINA
Occupancy: Owner Tenant Vacant **Current Occupant (if occupied):** DUSTRIA, MARLINA
Project Type (if applicable): Planned Unit Development Condominium Cooperative
Home Owners' Association Membership Fees (if applicable): \$ N/A per year per month
Market Area Name: FORT APACHE HACIENDA **Map Reference:** 62-B4 **Census Tract:** 4120.0058.21

ASSIGNMENT

The purpose of this appraisal is to develop a Current opinion of Market Value (as defined elsewhere in this report).

Property Rights Appraised: Fee Simple Leasehold Leased Fee Other (describe)

Intended Use: THE INTENDED USE IS FOR THE COURT TO EVALUATE THE PROPERTY FOR A BANKRUPTCY FILING.

Intended User(s) (by name or type): THE OWNER AND THE BANKRUPTCY ATTORNEY/COURT.

Client: MARLINA DUSTRIA **Address:** 5538 JACOBS FIELD STREET, LAS VEGAS, NV 89148
Appraiser: TRISTA CATER **Address:** LAS VEGAS

MARKET AREA DESCRIPTION

Location: Urban Suburban Rural **Built Up:** Over 75% 25-75% Under 25%

Growth Rate: Rapid Stable Slow **Property Values:** Increasing Stable Declining

Demand/Supply: Shortage In Balance Over Supply **Marketing Time:** Under 3 Mos. 3-6 Mos. Over 6 Mos.

Typical One-Unit Housing Ranges: **Price: (\$)** Low 95 High 575 **Predominant:** 140-175
Age: (yrs.) Low NEW High 20 **Predominant:** 5-10

Present Land Use: One-Unit: 75 % 2-4 Unit: 0 % **Multi-Unit:** 10 % **Comm'l:** 10 % **Vacant:** 5 %

Change in Land Use: Not Likely Likely * Is Changing * * To:

Market Area Comments:

Sales have decreased in the last year while inventory continues to rise. Foreclosures and short sales are becoming more common in the current market. Sellers must be realistic when pricing properties and be willing to market aggressively. Listing and pending sales are emphasized and only the most current closed sales are considered reliable in this changing market.

SALE / TRANSFER / LISTING HISTORY OF SUBJECT PROPERTY

My research: Did Did not reveal any prior sales or transfers of the subject property for the three years prior to the Effective Date of this appraisal. **Data Source(s):** MLS/COUNTY RECORDS

1st Prior Sale / Transfer

2nd Prior Sale / Transfer

3rd Prior Sale / Transfer

Date of Prior Sale / Transfer:

NONE

Price of Prior Sale / Transfer:

Source(s) of Prior Sale / Transfer Data:

COUNTY RECORDS

Analysis of sale / transfer history, any current agreements of sale or listing, and listing history (if relevant):

THERE WERE NO TRANSFERS OF COMPARABLE PROPERTIES WITHIN 12 MONTHS. THERE WERE NO TRANSFERS OF THE SUBJECT PROPERTY WITHIN 36 MONTHS.

Client: MARLINA DUSTRIA

Client File No.:

Appraiser File No.: 090335

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RESIDENTIAL APPRAISAL SUMMARY REPORT

SITE DESCRIPTION

Dimensions: 35 X 100 Site Area: 3,500 Sq.Ft.

Zoning Classification: R-2 Zoning Description: SINGLE FAMILY

Zoning Compliance: Legal Legal Non-Conforming (Grandfathered) Illegal No Zoning Regulations

Deed Restrictions: Are Covenants, Conditions, & Restrictions (CC&Rs) applicable? Yes No Unknown

Have the documents been reviewed? Yes No N/A Ground Rent (if applicable) \$ /

Comments:

Highest & Best Use, as improved, is the: Present use, or Other use (explain)

Characteristics: Topography: BUILT-UP PAD Size: TYPICAL FOR AREA

Shape: RECTANGULAR Drainage: APPEARS ADEQUATE

View: RESIDENTIAL Landscaping: AVERAGE

Other features: Inside Lot Corner Lot Cul de Sac Underground Utilities

| Utilities: | Public | Other | Provider/Description | Off-site Improvements: | Type | Public | Private |
|-----------------|-------------------------------------|--------------------------|----------------------|------------------------|--------------|-------------------------------------|--------------------------|
| Electricity: | <input checked="" type="checkbox"/> | <input type="checkbox"/> | | Street: | ASPHALT | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Gas: | <input checked="" type="checkbox"/> | <input type="checkbox"/> | | Curb/Gutter: | CONCRETE | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Water: | <input checked="" type="checkbox"/> | <input type="checkbox"/> | | Sidewalk: | CONCRETE | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| Sanitary Sewer: | <input checked="" type="checkbox"/> | <input type="checkbox"/> | | Alley: | NONE/TYPICAL | <input type="checkbox"/> | <input type="checkbox"/> |

Is the property or the improvements located in a FEMA Special Flood Hazard Area? Yes No

FEMA Flood Zone: X500 FEMA Map #: 32003C 2535E FEMA Map Date: 9/02

Site Comments:

This site is typical of the neighborhood in terms of size and appeal, with no readily apparent easements or encroachments. In short, a conforming site that provides a suitable setting.

DESCRIPTION OF THE IMPROVEMENTS

General Description: # of Units: 1 + Accessory Unit # of Stories: 2 Design (Style): 2-STORY

Type: Detached Attached Status: Existing Proposed Under Construction

Actual Age (years): 8 Effective Age (years): 8 Year Built: 2001

Exterior Description:

| | | | |
|-----------------|-----------|-----------------------|--------|
| Foundation: | CONCRETE | Exterior Walls: | STUCCO |
| Roof Surface: | TILE | Gutters & Downspouts: | NONE |
| Window Type(s): | DUAL PANE | Storm / Screens: | YES |

Heating System:

| | | |
|-----|-----------------|---------|
| FAU | Cooling System: | CENTRAL |
|-----|-----------------|---------|

| | | |
|---|---------------------|--------------------|
| Car Storage: <input type="checkbox"/> None <input checked="" type="checkbox"/> Garage <input type="checkbox"/> Carport <input checked="" type="checkbox"/> Driveway | (Surface: CONCRETE) | Total # of Cars: 2 |
|---|---------------------|--------------------|

| | | |
|------------------------------------|---------------------------------------|---------------------|
| Livable area above grade contains: | 6 Rooms, 3 Bedrooms, 2.5 Bath(s), and | 1,602 Sq.Ft. of GLA |
|------------------------------------|---------------------------------------|---------------------|

Describe Additional Features and Improvements:

THE PROPERTY IS ASSUMED TO BE IN OVERALL AVERAGE CONDITION. NO REPAIRS, RENOVATIONS OR REMODELING NEEDED.

Client: MARLINA DUSTRIA

Client File No.:

Appraiser File No.: 090335

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RESIDENTIAL APPRAISAL SUMMARY REPORT

SALES COMPARISON APPROACH TO VALUE

For the Sales Comparison Approach, the appraiser selects comparable sales that they consider the best matches to the subject in terms of physical characteristics, physical proximity, and time of sale. The appraiser then makes adjustments to the known sale price of each comparable sale to account for differences that are recognized by the market. For example, if the subject has a single bathroom but a comparable has 2, the comparable's sale price would be reduced by the attributable value given to the extra bathroom based on the market's reaction. Likewise, if a comparable sale has a smaller square footage than the subject, its sale price would be adjusted upward in the same manner. By weighting and reconciling these adjusted sales prices together, an opinion of value for the subject can be determined.

| FEATURE | SUBJECT | COMPARABLE SALE # 1 | COMPARABLE SALE # 2 | COMPARABLE SALE # 3 |
|-------------------------|---|---|---|---|
| Address | 5538 JACOBS FIELD STREET LAS VEGAS, NV 89148 | 5616 DAWN FALLS STREET APN: 163-30-416-021 | 5618 MOCCASIN POINT ST. APN: 163-30-414-098 | 10048 TITTLETON AVENUE APN: 163-30-414-036 |
| Proximity to Subject | | 0.60 miles W | 0.70 miles W | 0.76 miles W |
| Sale Price | \$ N/A | \$ 131,000 | \$ 120,000 | \$ 131,500 |
| Sale Price / GLA | \$ /Sq.Ft. \$ 81.82/Sq.Ft. | \$ 78.38/Sq.Ft. | \$ 85.89/Sq.Ft. | |
| Data Source(s) | EXT.INS/TAXSTR | MLS/COUNTY RECORDS | MLS/COUNTY RECORDS | MLS/COUNTY RECORDS |
| ADJUSTMENT ITEMS | DESCRIPTION | DESCRIPTION +(-) \$ Adjust | DESCRIPTION +(-) \$ Adjust | DESCRIPTION +(-) \$ Adjust |
| Sales or Financing | N/A | CASH | CASH | CASH |
| Concessions | N/A | | | |
| Date of Sale / Time | INSP. 3/09 | COE 12/26/09 | COE 1/15/09 | COE 3/13/09 |
| Rights Appraised | FEES SIMPLE | FEES SIMPLE | FEES SIMPLE | FEES SIMPLE |
| Location | AVERAGE | AVERAGE | AVERAGE | AVERAGE |
| Site | 3,500 Sq.Ft. | 2,614 SQ.FT. | 2,614 SQ.FT. | 2,178 SQ.FT. |
| View | RESIDENTIAL | RESIDENTIAL | RESIDENTIAL | RESIDENTIAL |
| Design (Style) | 2-STORY | 2-STORY | 2-STORY | 2-STORY |
| Quality of Construction | AVERAGE | AVERAGE | AVERAGE | AVERAGE |
| Age | 8 | 4 | 4 | 4 |
| Condition | ASSUMED AVG. | AVERAGE | AVERAGE | AVERAGE |
| Above Grade | Total Bdrms Baths | Total Bdrms Baths | Total Bdrms Baths | Total Bdrms Baths |
| Room Count | 6 3 2.5 | 6 3 3 | -2,000 6 4 2.5 | 6 4 2.5 |
| Gross Living Area | 1,602 Sq.Ft. | 1,601 Sq.Ft. | 1,531 Sq.Ft. | 1,531 Sq.Ft. |
| Basement Total Area | N/A | N/A | N/A | N/A |
| Basement Finish Area | N/A | N/A | N/A | N/A |
| Functional Utility | AVERAGE | AVERAGE | AVERAGE | AVERAGE |
| Heating / Cooling | FAU/CENTRAL | FAU/CENTRAL | FAU/CENTRAL | FAU/CENTRAL |
| Energy Efficient Items | STANDARD | STANDARD | STANDARD | STANDARD |
| Garage / Carport | 2-GARAGE | 2-GARAGE | 2-GARAGE | 2-GARAGE |
| Porch / Patio / Deck | PORCH,L/S | PORCH,L/S | PORCH,L/S | PORCH,L/S |
| Net Adjustment (Total) | <input type="checkbox"/> + <input checked="" type="checkbox"/> - \$ | -2,000 | <input checked="" type="checkbox"/> + <input type="checkbox"/> - \$ | 1,500 |
| Adjusted Sale Price | Net 1.5 % | | Net 1.3 % | Net 1.1 % |
| of Comparables | Gross 1.5 % \$ | 129,000 | Gross 1.3 % \$ | 121,500 |
| | | | | 133,000 |

Comments on the Sales Comparison Approach:

ALL SALES ARE TWO STORY HOMES LOCATED IN THE SUBJECT SUBMARKET. SALE 1 IS SUPERIOR TO SUBJECT DUE TO NUMBER OF BATHS. SALES 2 AND 3 ARE INFERIOR DUE TO GROSS LIVING AREA. SEE ATTACHED ADDENDA..

Appraiser's Indicated Value by the Sales Comparison Approach: \$ 130,000

Client: MARLINA DUSTRIA

Client File No.:

Appraiser File No.: 090335

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RESIDENTIAL APPRAISAL SUMMARY REPORT

RECONCILIATION

Final Reconciliation of the Approaches to Value:

THE SALES COMPARISON APPROACH BEST INDICATES MARKET VALUE AS DESCRIBED IN THE REPORT.

This appraisal is made "as is"; subject to completion per plans and specifications on the basis of a Hypothetical Condition that the improvements have been completed; subject to the following repairs or alterations on the basis of a Hypothetical Condition that the repairs or alterations have been completed; subject to the following required inspection(s) based on the Extraordinary Assumption that the following condition or deficiency does not require alteration or repair:

Subject is marketable "as is" and no repairs or alterations are required. See attached addenda.

This report is also subject to other Hypothetical Conditions or Extraordinary Assumptions as specified elsewhere in this report.

ATTACHMENTS

A true and complete copy of this report contains _____ pages, including all exhibits which are considered an integral part of the report. This appraisal report may not be properly understood without reference to the information contained in the complete report.

Attached Exhibits:

| | | | |
|--|---|--|--|
| <input checked="" type="checkbox"/> Scope of Work | <input checked="" type="checkbox"/> Limiting Conditions | <input checked="" type="checkbox"/> Certifications | <input checked="" type="checkbox"/> Narrative Addendum |
| <input checked="" type="checkbox"/> Photograph Addenda | <input type="checkbox"/> Sketch Addendum | <input checked="" type="checkbox"/> Map Addendum | <input type="checkbox"/> Flood Addendum |
| <input type="checkbox"/> Additional Sales | <input type="checkbox"/> Cost Addendum | <input type="checkbox"/> Manufactured House Addendum | <input type="checkbox"/> Hypothetical Conditions |
| <input type="checkbox"/> Extraordinary Assumptions | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

OPINION OF VALUE

This Opinion of Value may be subject to other Hypothetical Conditions and / or Extraordinary Assumptions, if so indicated above. Based on the degree of inspection of the subject property as indicated below, the defined Scope of Work for this appraisal assignment; the attached Statement of Assumptions and Limiting Conditions; and the attached Appraiser's Certifications, my (our) Current Opinion of the Market Value (or value range), as defined elsewhere in this report, of the real property that is the subject of this report is: \$ 130,000 as of: MARCH 25, 2009, which is both the Inspection Date and the Effective Date of this appraisal.

SIGNATURES

APPRAISER

SUPERVISORY APPRAISER (if required)
or CO-APPRAISER (if applicable)



Appraiser Name: TRISTA CATER
 Company: C & R APPRAISAL COMPANY
 Phone: 702-278-6099 Fax:
 E-mail: TRISTA5@COX.NET
 Date of Report (Signature): MARCH 31, 2009
 License or Certification #: 01127 State: NV
 Designation: LICENSED RESID. APPRAISER
 Expiration Date of License or Certification: 6/30/09
 Inspection of Subject: Interior & Exterior Exterior Only None
 Date of Inspection: MARCH 25, 2009

Client: MARLINA DUSTRIA

Client File No.:

Appraiser File No.: 090335

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ASSUMPTIONS & LIMITING CONDITIONS

SUBJECT PROPERTY

| | | | |
|-------------------|--------------------------|-----------|-----------|
| Property Address: | 5538 JACOBS FIELD STREET | City: | LAS VEGAS |
| State: | NV | Zip Code: | 89148 |

STATEMENT OF ASSUMPTIONS & LIMITING CONDITIONS

- The appraiser will not be responsible for matters of a legal nature that affect either the property being appraised or the title to it. The appraiser assumes that the title is good and marketable and, therefore, will not render any opinions about the title. The property is appraised on the basis of it being under responsible ownership.
- The appraiser may have provided a sketch in the appraisal report to show approximate dimensions of the improvements, and any such sketch is included only to assist the reader of the report in visualizing the property and understanding the appraiser's determination of its size. Unless otherwise indicated, a Land Survey was not performed.
- If so indicated, the appraiser has examined the available flood maps that are provided by the Federal Emergency Management Agency (or other data sources) and has noted in the appraisal report whether the subject site is located in an identified Special Flood Hazard Area. Because the appraiser is not a surveyor, he or she makes no guarantees, express or implied, regarding this determination.
- The appraiser will not give testimony or appear in court because he or she made an appraisal of the property in question, unless specific arrangements to do so have been made beforehand.
- The appraiser has noted in the appraisal report any adverse conditions (including, but not limited to, needed repairs, depreciation, the presence of hazardous wastes, toxic substances, etc.) observed during the inspection of the subject property, or that he or she became aware of during the normal research involved in performing the appraisal. Unless otherwise stated in the appraisal report, the appraiser has no knowledge of any hidden or unapparent conditions of the property, or adverse environmental conditions (including, but not limited to, the presence of hazardous wastes, toxic substances, etc.) that would make the property more or less valuable, and has assumed that there are no such conditions and makes no guarantees or warranties, express or implied, regarding the condition of the property. The appraiser will not be responsible for any such conditions that do exist or for any engineering or testing that might be required to discover whether such conditions exist. Because the appraiser is not an expert in the field of environmental hazards, the appraisal report must not be considered as an environmental assessment of the property.
- The appraiser obtained the information, estimates, and opinions that were expressed in the appraisal report from sources that he or she considers to be reliable and believes them to be true and correct. The appraiser does not assume responsibility for the accuracy of such items that were furnished by other parties.
- The appraiser will not disclose the contents of the appraisal report except as provided for in the Uniform Standards of Professional Appraisal Practice, and any applicable federal, state or local laws.
- If this appraisal is indicated as subject to satisfactory completion, repairs, or alterations, the appraiser has based his or her appraisal report and valuation conclusion on the assumption that completion of the improvements will be performed in a workmanlike manner.
- An appraiser's client is the party (or parties) who engage an appraiser in a specific assignment. Any other party acquiring this report from the client does not become a party to the appraiser-client relationship. Any persons receiving this appraisal report because of disclosure requirements applicable to the appraiser's client do not become intended users of this report unless specifically identified by the client at the time of the assignment.
- The appraiser's written consent and approval must be obtained before this appraisal report can be conveyed by anyone to the public, through advertising, public relations, news, sales, or by means of any other media, or by its inclusion in a private or public database.
- An appraisal of real property is not a 'home inspection' and should not be construed as such. As part of the valuation process, the appraiser performs a non-invasive visual inventory that is not intended to reveal defects or detrimental conditions that are not readily apparent. The presence of such conditions or defects could adversely affect the appraiser's opinion of value. Clients with concerns about such potential negative factors are encouraged to engage the appropriate type of expert to investigate.
- In developing this appraisal, the appraiser has incorporated only the Sales Comparison approach. The appraiser has excluded the Cost and Income approaches. The appraiser has determined that this appraisal process is not so limited that the results of the assignment are no longer credible.

Client: MARLINA DUSTRIA

Client File No.:

Appraiser File No.: 090335

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DEFINITIONS & SCOPE OF WORK

SUBJECT PROPERTY

| | | | |
|-------------------|--------------------------|-----------|-----------|
| Property Address: | 5538 JACOBS FIELD STREET | City: | LAS VEGAS |
| State: | NV | Zip Code: | 89148 |

DEFINITION OF MARKET VALUE *:

Market value means the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. Buyer and seller are typically motivated;
2. Both parties are well informed or well advised and acting in what they consider their own best interests;
3. A reasonable time is allowed for exposure in the open market;
4. Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

* This definition is from regulations published by federal regulatory agencies pursuant to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) of 1989 between July 5, 1990, and August 24, 1990, by the Federal Reserve System (FRS), National Credit Union Administration (NCUA), Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision (OTS), and the Office of Comptroller of the Currency (OCC). This definition is also referenced in regulations jointly published by the OCC, OTS, FRS, and FDIC on June 7, 1994, and in the Interagency Appraisal and Evaluation Guidelines, dated October 27, 1994.

The Scope of Work is the type and extent of research and analyses performed in an appraisal assignment that is required to produce credible assignment results, given the nature of the appraisal problem, the specific requirements of the intended user(s) and the intended use of the appraisal report. Reliance upon this report, regardless of how acquired, by any party or for any use, other than those specified in this report by the Appraiser, is prohibited. The Opinion of Value that is the conclusion of this report is credible only within the context of the Scope of Work, Effective Date, the Date of Report, the Intended User(s), the Intended Use, the stated Assumptions and Limiting Conditions, any Hypothetical Conditions and/or Extraordinary Assumptions, and the Type of Value, as defined herein. The appraiser, appraisal firm, and related parties assume no obligation, liability, or accountability, and will not be responsible for any unauthorized use of this report or its conclusions.

Additional Comments (Scope of Work, Extraordinary Assumptions, Hypothetical Conditions, etc.):

Client: MARLINA DUSTRIA

Client File No.:

Appraiser File No.: 090335

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CERTIFICATIONS

SUBJECT PROPERTY

| | | | | | |
|-------------------|--------------------------|-----------|-------|-----------|-------|
| Property Address: | 5538 JACOBS FIELD STREET | | City: | LAS VEGAS | |
| State: | NV | Zip Code: | 89148 | County: | CLARK |

APPRAISER'S CERTIFICATION

I certify that, to the best of my knowledge and belief:

- The statements of fact contained in this report are true and correct.
- The credibility of this report, for the stated use by the stated user(s), of the reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- I have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.
- I have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.
- My engagement in this assignment was not contingent upon developing or reporting predetermined results.
- My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice that were in effect at the time this report was prepared.
- I did not base, either partially or completely, my analysis and/or the opinion of value in the appraisal report on the race, color, religion, sex, handicap, familial status, or national origin of either the prospective owners or occupants of the subject property, or of the present owners or occupants of the properties in the vicinity of the subject property.
- Unless otherwise indicated, I have made a personal inspection of the property that is the subject of this report.
- Unless otherwise indicated, no one provided significant real property appraisal assistance to the person(s) signing this certification.

Additional Certifications:**SIGNATURES****APPRAISER**

Appraiser Name: TRISTA CATER
 Company: C & R APPRAISAL COMPANY
 Phone: 702-278-6099 Fax:
 E-mail: TRISTA5@COX.NET
 Date of Report (Signature): MARCH 31, 2009
 License or Certification #: 01127 State: NV
 Designation: LICENSED RESID. APPRAISER
 Expiration Date of License or Certification: 6/30/09
 Inspection of Subject: Interior & Exterior Exterior Only None
 Date of Inspection: MARCH 25, 2009

**SUPERVISORY APPRAISER (if required)
or CO-APPRAISER (if applicable)**

Supervisory or
Co-Appraiser Name:
 Company:
 Phone: Fax:
 E-mail:
 Date of Report (Signature):
 License or Certification #: State:
 Designation:
 Expiration Date of License or Certification:
 Inspection of Subject: Interior & Exterior Exterior Only None
 Date of Inspection:

Client:

Client File No.:

Appraiser File No.: 090335

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Photograph Addendum

| | | | |
|------------------|--------------------------|--------|-------|
| Client | MARLINA DUSTRIA | | |
| Property Address | 5538 JACOBS FIELD STREET | | |
| City | LAS VEGAS | County | CLARK |
| Client | MARLINA DUSTRIA | | |



FRONT VIEW OF SUBJECT PROPERTY



STREET VIEW

Comparable Photo Page

| | | | |
|------------------|--------------------------|--------|-------------------|
| Client | MARLINA DUSTRIA | | |
| Property Address | 5538 JACOBS FIELD STREET | | |
| City | LAS VEGAS | County | CLARK |
| Client | MARLINA DUSTRIA | State | NV Zip Code 89148 |



Comparable 1
5616 DAWN FALLS STREET



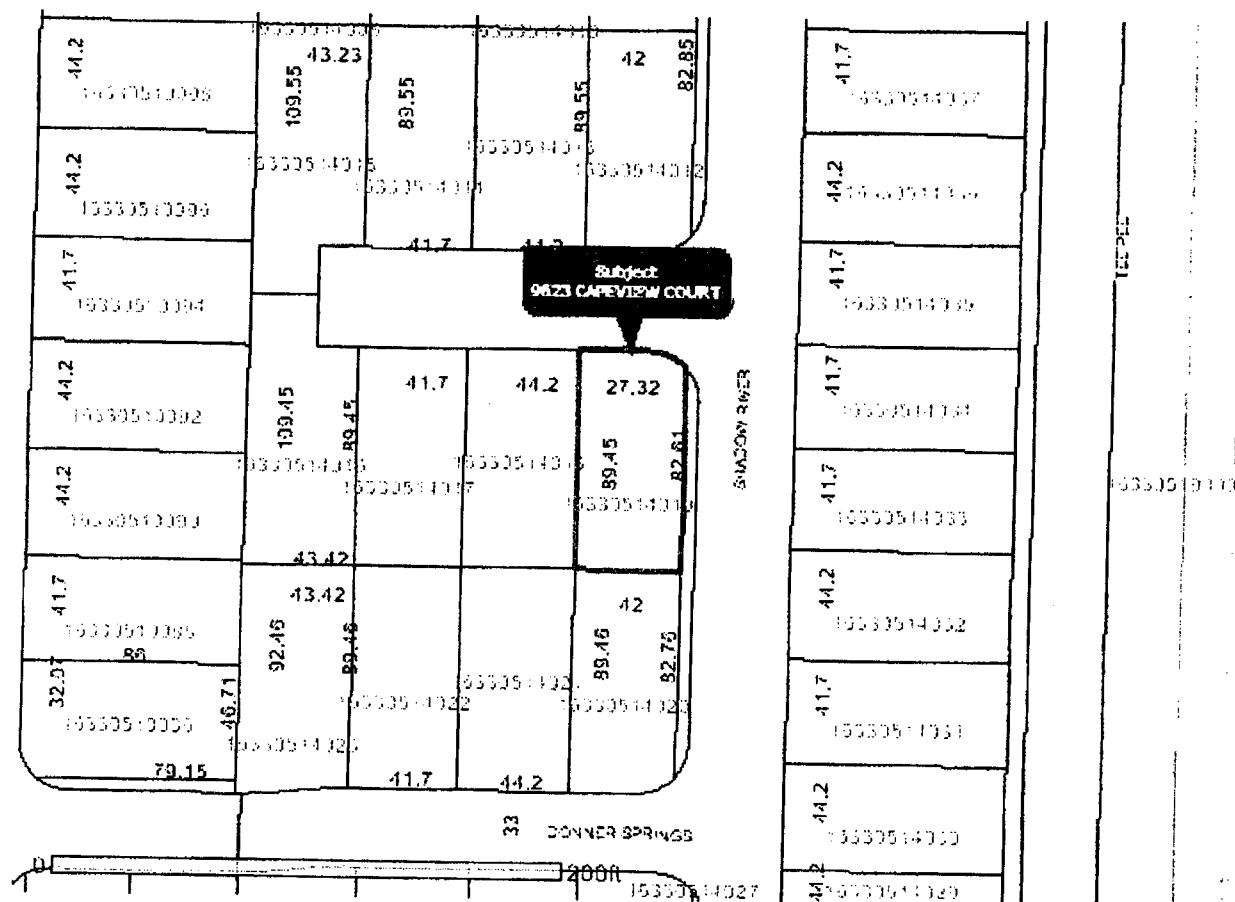
Comparable 2
5618 MOCCASIN POINT ST.



Comparable 3
10048 TITTLETON AVENUE

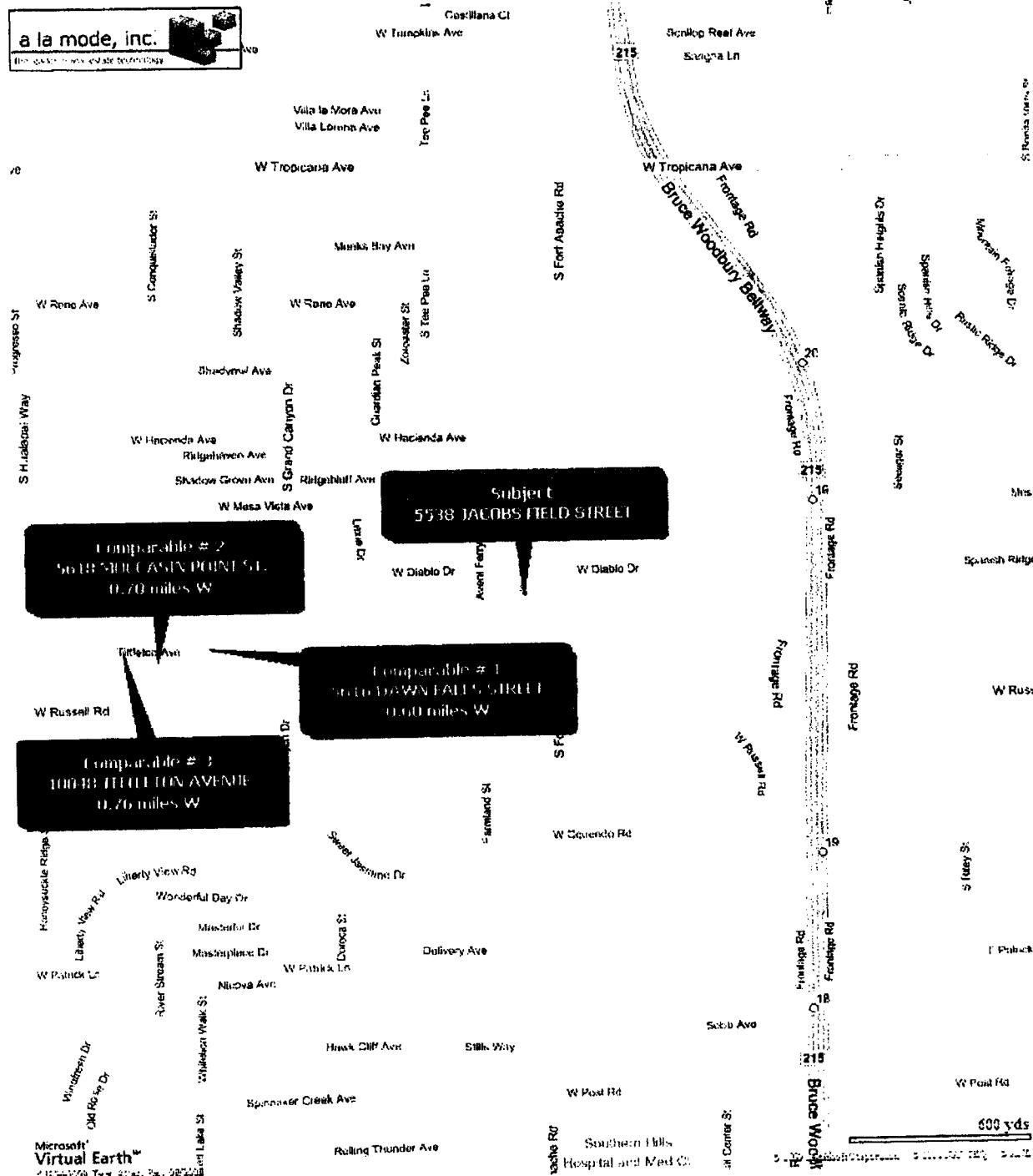
Plat Map

| | | | |
|------------------|--------------------------|--------|-------|
| Client | MARLINA DUSTRIA | | |
| Property Address | 5538 JACOBS FIELD STREET | | |
| City | LAS VEGAS | County | CLARK |
| Client | MARLINA DUSTRIA | | |



Location Map

| | | | |
|------------------|--------------------------|--------|-------------------|
| Client | MARLINA DUSTRIA | | |
| Property Address | 5538 JACOBS FIELD STREET | | |
| City | LAS VEGAS | County | CLARK |
| | | State | NV Zip Code 89148 |



LICENSE

APPRaiser LICENSE

STATE OF NEVADA DEPARTMENT OF BUSINESS AND INDUSTRY

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Supplementary Table 1

in sources on record, and which, in view of the fact that the author of the original article is not known, is not possible to identify. The author of the article, however, is known to be a member of the New York Review Society, and it is believed that the author of the article is the same person as the author of the article in the New York Review. This inference must be considered in view of the fact that the author of the article in the New York Review is not known to be a member of the New York Review Society.

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A circular library stamp with a decorative border. Inside the border, the text is arranged in a square frame. The characters are stylized and somewhat faded, but appear to read "THE LIBRARY OF THE UNIVERSITY OF TORONTO".

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